

AMENDED IN ASSEMBLY AUGUST 7, 2012

AMENDED IN ASSEMBLY JUNE 25, 2012

AMENDED IN ASSEMBLY MAY 3, 2012

AMENDED IN SENATE JANUARY 4, 2012

SENATE BILL

No. 12

Introduced by Senator Corbett

December 6, 2010

An act to repeal and add Division 6 (commencing with Section 6101) of the Commercial Code, relating to bulk sales.

LEGISLATIVE COUNSEL'S DIGEST

SB 12, as amended, Corbett. Bulk sales.

Existing law, the Uniform Commercial Code—Bulk Sales, is a comprehensive body of law regulating bulk sales, which are defined to include a sale not in the ordinary course of the seller's business of more than $\frac{1}{2}$ the seller's inventory and equipment, as specified. Existing law exempts from the bulk sales law, among other transactions, a sale of assets with a value of less than \$10,000, as specified, or a value of more than \$5,000,000 on the date of the bulk sale agreement. Existing law imposes certain notice requirements on a buyer of assets in a bulk sale, and provides that a buyer who fails to comply with those notice requirements with respect to a claimant is liable to the claimant for specified damages. In the case of a bulk sale where the consideration is \$2,000,000 or less and is substantially all cash or an obligation of the transferee to pay cash, existing law requires the buyer or escrow agent involved to apply the cash consideration to pay the debts of the seller for which claims are due and payable, as specified. A person holding

a claim incurred in the seller's business, other than specified claims, is a claimant under the bulk sales law.

The Alcoholic Beverage Control Act, administered by the Department of Alcoholic Beverage Control, regulates the sale and distribution of alcoholic beverages and the granting of licenses for the manufacture, distribution, and sale of alcoholic beverages within the state. The Cigarette and Tobacco Products Licensing Act provides for the licensure, by the State Board of Equalization, of manufacturers, distributors, wholesalers, importers, and retailers of cigarette or tobacco products.

This bill would repeal the Uniform Commercial ~~Code—Bulk Code~~—Bulk Sales provisions. The bill would add provisions that apply, on and after January 1, 2013, to a sale not in the ordinary course of a seller's business of more than $\frac{1}{2}$ the seller's inventory and equipment, ~~including the inventory or equipment purchased from a wholesaler or distributor of alcoholic beverages or cigarette and tobacco products,~~ without regard to the value of the assets involved, as specified. The bill would *require the buyer in the bulk sale to provide notice of the sale in a specified manner. With respect to a bulk sale that includes inventory or equipment purchased or otherwise obtained from an alcoholic beverage wholesaler or a cigarette and tobacco wholesaler or distributor, the bill would subject the buyer to specified liability for failing to comply with the notice requirement, and would require the buyer to deposit the full amount of the purchase price or consideration with an escrow agent to be distributed to meet obligations and claims, as specified,* ~~and would limit a claimant to specified persons, including a wholesaler or distributor of alcoholic beverages or cigarette and tobacco products.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Division 6 (commencing with Section 6101) of
- 2 the Commercial Code is repealed.
- 3 SEC. 2. Division 6 (commencing with Section 6101) is added
- 4 to the Commercial Code, to read:

DIVISION 6. BULK SALES

CHAPTER 1. GENERAL

6101. This division shall be known and may be cited as the Bulk Sales Law.

6102. (a) In this division, unless the context otherwise requires:

(1) “Assets” means the inventory and equipment that is the subject of a bulk sale and any tangible and intangible personal property used or held for use primarily in, or arising from, the seller’s business and sold in connection with that inventory and equipment, but the term does not include any of the following:

(A) Fixtures, as defined in paragraph (41) of subdivision (a) of Section 9102, other than readily removable factory and office machines.

(B) The lessee’s interest in a lease of real property.

(C) Property to the extent it is generally exempt from creditor process under nonbankruptcy law.

~~(2) “Bulk sale” means a sale not in the ordinary course of the seller’s business of more than one-half of the seller’s inventory and equipment, including the inventory and equipment purchased from a licensee, as measured by value on the date of the bulk-sale agreement.~~

~~(2) “Auctioneer” means a person whom the seller engages to direct, conduct, control, or be responsible for a sale by auction.~~

~~(3) Except as provided in Chapter 3 (commencing with Section 6106), “bulk sale” means either of the following:~~

~~(A) In the case of a sale by auction or a sale or series of sales conducted by a liquidator on the seller’s behalf, a sale or series of sales not in the ordinary course of the seller’s business of more than one-half of the seller’s inventory and equipment, as measured by value on the date of the bulk-sale agreement.~~

~~(B) In all other cases, a sale not in the ordinary course of the seller’s business of more than one-half the seller’s inventory and equipment, as measured by value on the date of the bulk-sale agreement.~~

~~(3)~~

(4) “Claim” means a right to payment from the seller, whether or not the right is reduced to judgment, liquidated, fixed, matured, disputed, secured, legal, or equitable. The term includes costs of

1 collection and attorney's fees only to the extent that the laws of
2 this state permit the holder of the claim to recover them in an action
3 against the obligor. The term does not include any of the following:

4 (A) An unsecured and unmatured claim for employment
5 compensation and benefits, including commissions and vacation,
6 severance, and sick-leave pay.

7 (B) A claim for injury to an individual or to property, or for
8 breach of warranty, unless all of the following are satisfied:

9 (i) A right of action for the claim has accrued.

10 (ii) The claim has been asserted against the seller.

11 (iii) The seller knows the identity of the person asserting the
12 claim and the basis upon which the person has asserted it.

13 (C) A claim for taxes owing to a governmental unit, if both of
14 the following are satisfied:

15 (i) A statute governing the enforcement of the claim permits or
16 requires notice of the bulk sale to be given to the governmental
17 unit in a manner other than by compliance with the requirements
18 of this division.

19 (ii) Notice is given in accordance with the statute.

20 ~~(4)~~

21 (5) "Claimant" means any person holding a claim described in
22 paragraphs (1) to (5), inclusive, of subdivision (b) of Section
23 6106.4 incurred in the seller's business, or a licensee holding a
24 claim incurred in the seller's business.

25 ~~(5) (A) "Date of the bulk sale" means the later of the date on
26 which either of the following occurs:~~

27 (6) (A) "*Date of the bulk sale*" means either of the following:

28 (i) *If the sale is by auction or is conducted by a liquidator on
29 the seller's behalf, the date on which more than 10 percent of the
30 net proceeds is paid to or for the benefit of the seller.*

31 (ii) *In all other cases, the later of the date on which either of
32 the following occurs:*

33 ~~(i)~~

34 (I) More than 10 percent of the net contract price is paid to or
35 for the benefit of the seller.

36 ~~(ii)~~

37 (II) More than 10 percent of the assets, as measured by value,
38 are transferred to the buyer.

39 (B) For purposes of this paragraph the following shall apply:

1 (i) Delivery of a negotiable instrument, as defined in subdivision
2 (a) of Section 3104, to or for the benefit of the seller in exchange
3 for assets constitutes payment of the contract price pro tanto.

4 (ii) ~~The~~ *To the extent that the contract price is deposited in*
5 *escrow, the contract price is paid to or for the benefit of the seller*
6 *when the seller acquires the unconditional right to receive the*
7 *deposit or when the deposit is delivered to the seller or for the*
8 *benefit of the seller, whichever is earlier.*

9 (iii) An asset is transferred when a person holding an unsecured
10 claim can no longer obtain through judicial proceedings rights to
11 the asset that are superior to those of the buyer arising as a result
12 of the bulk sale. A person holding an unsecured claim can obtain
13 those superior rights to a tangible asset at least until the buyer has
14 an unconditional right, under the bulk-sale agreement, to possess
15 the asset, and a person holding an unsecured claim can obtain those
16 superior rights to an intangible asset at least until the buyer has an
17 unconditional right, under the bulk-sale agreement, to use the asset.

18 ~~(6) “Date of the bulk-sale agreement” means the date on which~~
19 ~~a bulk-sale agreement becomes enforceable between the buyer and~~
20 ~~the seller.~~

21 (7) *“Date of the bulk-sale agreement” means either of the*
22 *following:*

23 (A) *In the case of a sale by auction or conducted by a liquidator*
24 *pursuant to subparagraph (A) of paragraph (3), the date on which*
25 *the seller engages the auctioneer or liquidator.*

26 (B) *In all other cases, the date on which a bulk-sale agreement*
27 *becomes enforceable between the buyer and the seller.*

28 ~~(7)~~

29 (8) “Debt” means liability on a claim.

30 ~~(8)~~

31 (9) “Licensee” means ~~a person licensed as a distributor under~~
32 ~~the Alcoholic Beverage Control Act (Division 9 (commencing~~
33 ~~with Section 23000) of the Business and Professions Code); a~~
34 ~~wholesaler, as defined in Section 23021 of the Business and~~
35 ~~Professions Code, licensed who holds a wholesaler’s license under~~
36 ~~the Alcoholic Beverage Control Act (Division 9 (commencing~~
37 ~~with Section 23000) of the Business and Professions Code); or a~~
38 ~~person licensed as a wholesaler or distributor of cigarettes and~~
39 ~~tobacco products pursuant to Chapter 3 (commencing with Section~~
40 ~~22975) of Division 8.6 of the Business and Professions Code.~~

1 (10) “Liquidator” means a person who is regularly engaged
2 in the business of disposing of assets for businesses contemplating
3 liquidation or dissolution.

4 ~~(9)~~

5 (11) “Net contract price” means the new consideration the buyer
6 is obligated to pay for the assets less each of the following:

7 (A) The amount of any proceeds of the sale of an asset, to the
8 extent the proceeds are applied in partial or total satisfaction of a
9 debt secured by the asset.

10 (B) The amount of any debt to the extent it is secured by a
11 security interest or lien that is enforceable against the asset before
12 and after it has been sold to a buyer. If a debt is secured by an asset
13 and other property of the seller, the amount of the debt secured by
14 a security interest or lien that is enforceable against the asset is
15 determined by multiplying the debt by a fraction, the numerator
16 of which is the value of the new consideration for the asset on the
17 date of the bulk sale and the denominator of which is the value of
18 all property securing the debt on the date of the bulk sale.

19 (12) “Net proceeds” means the new consideration received for
20 assets sold at a sale by auction or a sale conducted by a liquidator
21 on the seller’s behalf less each of the following:

22 (A) Commissions and reasonable expenses of the sale.

23 (B) The amount of any proceeds of the sale of an asset, to the
24 extent the proceeds are applied in partial or total satisfaction of
25 a debt secured by the asset.

26 (C) The amount of any debt to the extent it is secured by a
27 security interest or lien that is enforceable against the asset before
28 and after it has been sold to a buyer. If a debt is secured by an
29 asset and other property of the seller, the amount of the debt
30 secured by a security interest or lien that is enforceable against
31 the asset is determined by multiplying the debt by a fraction, the
32 numerator of which is the value of the new consideration for the
33 asset on the date of the bulk sale and the denominator of which is
34 the value of all property securing the debt on the date of the bulk
35 sale.

36 ~~(10)~~

37 (13) A sale is “in the ordinary course of the seller’s business”
38 if the sale comports with usual or customary practices in the kind
39 of business in which the seller is engaged or with the seller’s own
40 usual or customary practices.

~~(11)~~

~~(14)~~ “United States” includes its territories and possessions and the Commonwealth of Puerto Rico.

~~(12)~~

~~(15)~~ “Value” means fair market value.

(b) The following definitions in other divisions apply to this division:

(1) “Buyer.” Paragraph (a) of subdivision (1) of Section 2103.

(2) “Equipment.” Paragraph (33) of subdivision (a) of Section 9102.

(3) “Inventory.” Paragraph (48) of subdivision (a) of Section 9102.

(4) “Sale.” Subdivision (1) of Section 2106.

(5) “Seller.” Paragraph (d) of subdivision (1) of Section 2103.

(c) In addition, Division 1 (commencing with Section 1101) contains general definitions and principles of construction and interpretation applicable throughout this division.

6103. (a) Except as otherwise provided in subdivision (c), this division applies to a bulk sale if both of the following are satisfied:

(1) The seller’s principal business is the sale of inventory from stock, including those who manufacture what they sell, or that of a restaurant owner.

(2) On the date of the bulk-sale agreement the seller is located in this state or, if the seller is located in a jurisdiction that is not a part of the United States, the seller’s major executive office in the United States is in this state.

(b) A seller is deemed to be located at its place of business. If a seller has more than one place of business, the seller is deemed located at its chief executive office.

(c) This division does not apply to any of the following:

(1) A transfer made to secure payment or performance of an obligation.

(2) A transfer of collateral to a secured party pursuant to Section 9609.

(3) A disposition of collateral pursuant to Section 9610.

(4) Retention of collateral pursuant to Section 9620.

(5) A sale of an asset encumbered by a security interest or lien if (A) all the proceeds of the sale are applied in partial or total satisfaction of the debt secured by the security interest or lien or

(B) the security interest or lien is enforceable against the asset after it has been sold to the buyer and the net contract price is zero.

(6) A general assignment for the benefit of creditors or to a subsequent transfer by the assignee.

(7) A sale by an executor, administrator, receiver, trustee in bankruptcy, debtor in possession, or any public officer under judicial process.

(8) A sale made in the course of judicial or administrative proceedings for the dissolution or reorganization of an organization.

(9) A sale to a buyer whose principal place of business is in the United States and who satisfies each of the following:

(A) Assumes in full the debts that were incurred in the seller's business before the date of the bulk sale.

(B) Is not insolvent after the assumption.

(C) Records and publishes notice of the assumption not later than 30 days after the date of the bulk sale in the manner provided by Section 6105.

(10) A sale required by, and made pursuant to, statute.

(11) A transfer of personal property, if the personal property is leased back to the transferor immediately following the transfer and either there has been compliance with subdivision (h) of Section 3440.1 of the Civil Code or the transfer is exempt under subdivision (k) of Section 3440.1 of the Civil Code.

(12) A transfer which is subject to and complies with Article 5 (commencing with Section 24070) of Chapter 6 of Division 9 of the Business and Professions Code, if the transferee records and publishes notice of the transfer at least 12 business days before the transfer is to be consummated in the manner provided in Section 6105 and the notice contains the information set forth in paragraphs (1) to (4), inclusive, of subdivision (a) of Section 6105.

(13) A transfer of goods in a warehouse where a warehouse receipt has been issued therefor by a warehouseman (Section 7102) and a copy of the receipt is kept at the principal place of business of the warehouseman and at the warehouse in which the goods are stored.

(d) The notice under subparagraph (C) of paragraph (9) of subdivision (c) shall state each of the following:

(1) That a sale that may constitute a bulk sale has been or will be made.

(2) The date or prospective date of the bulk sale.

1 (3) The individual, partnership, or corporate names and the
2 addresses of the seller and buyer.

3 (4) The address to which inquiries about the sale may be made,
4 if different from the seller's address.

5 (5) That the buyer has assumed or will assume the debts that
6 were incurred in the seller's business before the date of the bulk
7 sale.

8 *6103.5. This division shall apply to a bulk sale if the date of*
9 *the bulk-sale agreement is on or after January 1, 2013.*

10
11 *CHAPTER 2. NOTICE*
12

13 *6104. In a bulk sale, the buyer shall do each of the following:*

14 *(a) Obtain from the seller a list of all business names and*
15 *addresses used by the seller within three years before the date the*
16 *list is sent or delivered to the buyer.*

17 *(b) Give notice of the bulk sale in accordance with Section 6105.*

18 ~~6105. (a) In a bulk sale, as defined in paragraph (2) of~~
19 ~~subdivision (a) of Section 6102, the buyer shall give notice in~~
20 ~~accordance with this section.~~

21 *6105. In order to comply with subdivision (b) of Section 6104,*
22 *each of the following shall be satisfied:*

23 ~~(b)~~

24 *(a) The notice shall comply with each of the following:*

25 *(1) State that a bulk sale is about to be made.*

26 *(2) State the name and business address of the seller together*
27 *with any other business name and address listed by the seller and*
28 *the name and business address of the buyer.*

29 *(3) State the location and general description of the assets.*

30 *(4) State the place and the anticipated date of the bulk sale.*

31 ~~(5) The~~ *If the bulk sale is subject to Chapter 3 (commencing*
32 *with Section 6106), state the name and address of the escrow agent*
33 *with whom claims may be filed and the last date for filing those*
34 *claims, which shall be the business day before the date stated under*
35 *paragraph (4).*

36 ~~(e)~~

37 *(b) At least 12 business days before the date of the bulk sale,*
38 *the notice shall be:*

1 (1) Recorded in the office of the county recorder in the county
2 or counties in this state in which the tangible assets are located
3 and, if different, in the county in which the seller is located.

4 (2) Published at least once in a newspaper of general circulation
5 published in the judicial district in this state in which the tangible
6 assets are located and in the judicial district, if different, in which
7 the seller is located, if in either case there is one, and if there is
8 none, then in a newspaper of general circulation in the county in
9 which the judicial district is located. If the tangible assets are
10 located in more than one judicial district in this state, the
11 publication required under this paragraph shall be in a newspaper
12 of general circulation published in the judicial district in this state
13 in which a greater portion of the tangible assets are located, on the
14 date the notice is published, than in any other judicial district in
15 this state and, if different, in the judicial district in which the seller
16 is located. As used in this subdivision, “business day” means any
17 day other than a Saturday, Sunday, or day observed as a holiday
18 by the state government.

19 (3) Delivered or sent by registered or certified mail to the county
20 tax collector in the county or counties in this state in which the
21 tangible assets are located. If delivered during the period from
22 January 1 to May 7, inclusive, the notice shall be accompanied by
23 a completed business property statement with respect to property
24 involved in the bulk sale pursuant to Section 441 of the Revenue
25 and Taxation Code.

26
27 *CHAPTER 3. ESCROW AND LIABILITY*
28

29 *6106. (a) As used in this chapter, “bulk sale” means a sale*
30 *not in the ordinary course of the seller’s business, other than a*
31 *sale by auction or conducted by a liquidator, of more than one-half*
32 *of the seller’s inventory and equipment, as measured by value on*
33 *the date of the bulk-sale agreement, where that sale includes*
34 *inventory or equipment purchased or otherwise obtained from a*
35 *licensee.*

36 *(b) This chapter applies to a bulk sale only if the bulk sale*
37 *includes inventory or equipment purchased or otherwise obtained*
38 *from a licensee.*

39 *6106.2. (a) Upon every bulk sale, it is the duty of the escrow*
40 *agent to apply the consideration so far as necessary to pay those*

1 debts of the seller for which the claims are due and payable on or
2 before the date of the bulk sale and are received in writing by the
3 escrow agent on or prior to the date specified as the last date to
4 file claims. This duty of the escrow agent runs to each claimant
5 timely filing the claim. Claims shall be deemed timely filed only
6 if actually received by the escrow agent before the close of business
7 on the day specified as the last date to file those claims.

8 (b) If the seller disputes whether a claim is due and payable on
9 the date of the bulk sale or the amount of any claim, the escrow
10 agent shall withhold from distribution an amount equal to (1) 125
11 percent of the first seven thousand five hundred dollars (\$7,500)
12 of the claim, and (2) an amount equal to that portion of the claim
13 in excess of the first seven thousand five hundred dollars (\$7,500),
14 or the pro rata amount under subdivision (b) of Section 6106.4, if
15 applicable, and shall send a written notice to the claimant filing
16 the claim on or before two business days after the distribution that
17 the amount will be paid to the seller, or to the other claimants in
18 accordance with subdivision (b) of Section 6106.4, as the case
19 may be, unless attached within 25 days from the mailing of the
20 notice. Any portion of the amount withheld which is not attached
21 by the claimant within that time shall be paid by the escrow agent
22 to the seller, or to the other claimants in accordance with
23 subdivision (b) of Section 6106.4 if they have not been paid in
24 full. An attachment of any amount so withheld shall be limited in
25 its effect to the amount withheld for the attaching claimant and
26 shall give the attaching claimant no greater priority or rights with
27 respect to its claim than the claimant would have had if the claim
28 had not been disputed. For purposes of this subdivision, a claimant
29 may obtain the issuance of an attachment for a claim which is less
30 than five hundred dollars (\$500) and which otherwise meets the
31 requirements of Section 483.010 of the Code of Civil Procedure
32 or which is a secured claim or lien of the type described in Section
33 483.010 of the Code of Civil Procedure. The remedy in this
34 subdivision shall be in addition to any other remedies the claimant
35 may have, including any right to attach the property intended to
36 be transferred or any other property.

37 (c) The escrow agent shall, within 45 days after the buyer takes
38 legal title to any of the goods, either pay to the extent of the cash
39 consideration the claims filed and not disputed, or the applicable
40 portion thereof to the extent of the cash consideration under

1 subdivision (b) of Section 6106.4, or institute an action in
2 interpleader pursuant to subdivision (b) of Section 386 of the Code
3 of Civil Procedure and deposit the consideration with the clerk of
4 the court pursuant to subdivision (c) of that section. The action
5 shall be brought in the appropriate court in the county where the
6 seller had its principal place of business in this state. Sections
7 386.1 and 386.6 of the Code of Civil Procedure shall apply in the
8 action.

9 (d) This section shall not be construed to release any security
10 interest or other lien on the property which is the subject of the
11 bulk sale except upon a voluntary release by the secured party or
12 lienholder.

13 6106.4. The intended buyer shall deposit with the escrow agent
14 the full amount of the purchase price or consideration. If, at the
15 time the bulk sale is otherwise ready to be consummated, the
16 amount of cash deposited or agreed to be deposited at or prior to
17 consummation in the escrow is insufficient to pay in full all of the
18 claims filed with the escrow agent, the escrow agent shall do each
19 of the following:

20 (a) (1) Delay the distribution of the consideration and the
21 passing of legal title for a period of not less than 25 days nor more
22 than 30 days from the date the notice required in paragraph (2) is
23 mailed.

24 (2) Within five business days after the time the bulk sale would
25 otherwise have been consummated, send a written notice to each
26 claimant who has filed a claim stating the total consideration
27 deposited or agreed to be deposited in the escrow, the name of
28 each claimant who filed a claim against the escrow and the amount
29 of each claim, the amount proposed to be paid to each claimant,
30 the new date scheduled for the passing of legal title pursuant to
31 paragraph (1) and the date on or before which distribution will be
32 made to claimants which shall not be more than five days after the
33 new date specified for the passing of legal title.

34 (3) If no written objection to the distribution described in the
35 notice required by paragraph (2) is received by the escrow agent
36 prior to the new date specified in the notice for the passing of legal
37 title, the escrow agent shall not be liable to any person to whom
38 the notice required by paragraph (2) was sent for any good faith
39 error that may have been committed in allocating and distributing
40 the consideration as stated in the notice.

1 (b) Distribute the consideration in the following order of
2 priorities:

3 (1) All obligations owing to the United States, to the extent
4 given priority by federal law.

5 (2) Secured claims, including statutory and judicial liens, to the
6 extent of the consideration fairly attributable to the value of the
7 properties securing the claims and in accordance with the priorities
8 provided by law. A secured creditor shall participate in the
9 distribution pursuant to this subdivision only if a release of lien is
10 deposited by the secured creditor conditioned only upon receiving
11 an amount equal to the distribution.

12 (3) Escrow and professional charges and brokers' fees
13 attributable directly to the sale.

14 (4) Wage claims given priority by Section 1205 of the Code of
15 Civil Procedure.

16 (5) All other tax claims.

17 (6) All other unsecured claims pro rata, including any deficiency
18 claims of partially secured creditors.

19 (c) To the extent that an obligation of the buyer to pay cash in
20 the future is a part of the consideration and the cash consideration
21 is not sufficient to pay all claims filed in full, apply all principal
22 and interest received on the obligation to the payment of claims
23 in accordance with subdivision (b) until they are paid in full before
24 making any payment to the seller. In that case, the notice sent
25 pursuant to subdivision (a) shall state the amount, terms, and due
26 dates of the obligation and the portion of the claims expected to
27 be paid thereby.

28 No funds may be drawn from the escrow, prior to the actual
29 closing and completion of the escrow, for the payment, in whole
30 or in part, of any commission, fee, or other consideration as
31 compensation for a service that is contingent upon the performance
32 of any act, condition, or instruction set forth in the escrow.

33 ~~6106.6. This division shall apply to a bulk sale if the date of~~
34 ~~the bulk sale agreement is on or after January 1, 2013.~~

35 *6107. (a) Except as provided in subdivision (c), and subject*
36 *to the limitation in subdivision (d), a buyer in a bulk sale who fails*
37 *to comply with the requirements of Section 6104 with respect to a*
38 *claimant is liable to the claimant for damages in the amount of*
39 *the claim, reduced by any amount that the claimant would not have*
40 *realized if the buyer had complied.*

1 (b) In an action under subdivision (a), the claimant has the
2 burden of establishing the validity and amount of the claim, and
3 the buyer has the burden of establishing the amount that the
4 claimant would not have realized if the buyer had complied.

5 (c) A buyer in a bulk sale who made a good faith and
6 commercially reasonable effort to comply with the requirements
7 of Section 6104 or to exclude the sale from the application of this
8 division under subdivision (c) of Section 6103 is not liable to
9 creditors for failure to comply with the requirements of Section
10 6104. The buyer has the burden of establishing the good faith and
11 commercial reasonableness of the effort.

12 (d) In a single bulk sale, the cumulative liability of the buyer
13 for failure to comply with the requirements of Section 6104 may
14 not exceed an amount equal to any of the following:

15 (1) If the assets consist only of inventory and equipment, twice
16 the net contract price, less the amount of any part of the net
17 contract price paid to or applied for the benefit of the seller or a
18 claimant except to the extent that the payment or application is
19 applied to a debt which is secured by the assets and which has
20 been taken into consideration in determining the net contract price.

21 (2) If the assets include property other than inventory and
22 equipment, twice the net value of the inventory and equipment less
23 the amount of the portion of any part of the net contract price paid
24 to or applied for the benefit of the seller or a claimant which is
25 allocable to the inventory and equipment except to the extent that
26 the payment or application is applied to a debt which is secured
27 by the assets and which has been taken into consideration in
28 determining the net contract price.

29 (e) For the purposes of paragraph (2) of subdivision (d), the
30 “net value” of an asset is the value of the asset less each of the
31 following:

32 (1) The amount of any proceeds of the sale of an asset, to the
33 extent the proceeds are applied in partial or total satisfaction of
34 a debt secured by the asset.

35 (2) The amount of any debt to the extent it is secured by a
36 security interest or lien that is enforceable against the asset before
37 and after it has been sold to a buyer. If a debt is secured by an
38 asset and other property of the seller, the amount of the debt
39 secured by a security interest or lien that is enforceable against
40 the asset is determined by multiplying the debt by a fraction, the

1 *numerator of which is the value of the asset on the date of the bulk*
2 *sale and the denominator of which is the value of all property*
3 *securing the debt on the date of the bulk sale. The portion of a part*
4 *of the net contract price paid to or applied for the benefit of the*
5 *seller or a claimant that is “allocable to the inventory and*
6 *equipment” is the portion that bears the same ratio to that part of*
7 *the net contract price as the net value of the inventory and*
8 *equipment bears to the net value of all of the assets.*

9 *(f) A payment made by the buyer to a person to whom the buyer*
10 *is, or believes it is, liable under subdivision (a) reduces pro tanto*
11 *the buyer’s cumulative liability under subdivision (d).*

12 *(g) No action may be brought under subdivision (a) by or on*
13 *behalf of a claimant whose claim is unliquidated or contingent.*

14 *(h) A buyer’s failure to comply with the requirements of Section*
15 *6104 does not do any of the following:*

16 *(1) Impair the buyer’s rights in or title to the assets.*

17 *(2) Render the sale ineffective, void, or voidable.*

18 *(3) Entitle a claimant to more than a single satisfaction of its*
19 *claim.*

20 *(4) Create liability other than as provided in this chapter.*

21 *(i) Payment of the buyer’s liability under subdivision (a)*
22 *discharges pro tanto the seller’s debt to the claimant*

23 *(j) Unless otherwise agreed, a buyer has an immediate right of*
24 *reimbursement from the seller for any amount paid to a claimant*
25 *in partial or total satisfaction of the buyer’s liability under*
26 *subdivision (a).*

27 *6108. (a) Except as provided in subdivision (b), an action*
28 *under this chapter against a buyer in a bulk sale shall be*
29 *commenced within one year after the date of the bulk sale.*

30 *(b) If the buyer conceals the fact that the sale has occurred, the*
31 *limitation is tolled and an action under this division may be*
32 *commenced within the earlier of the following:*

33 *(1) One year after the person bringing the action discovers that*
34 *the sale has occurred.*

35 *(2) One year after the person bringing the action should have*
36 *discovered that the sale has occurred, but no later than two years*
37 *after the date of the bulk sale. Complete noncompliance with the*

1 *requirements of this division does not of itself constitute*
2 *concealment.*

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